



A RESOLUTION

03- R-1714

BY CITY UTILITIES COMMITTEE:

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE, **ASSIGNMENT** BEHALF OF THE CITY, AN ON ASSUMPTION AGREEMENT WITH UNITED WATER SERVICES ATLANTA LLC AND UNITED WATER RESOURCES, INC. AND AN AMENDED AND RESTATED AGREEMENT FOR SLUDGE DISPOSAL **SERVICES** WITH **IER** HAULING AND CORPORATION, INC. FOR AN AMOUNT NOT TO EXCEED \$250,000; AND FOR OTHER PURPOSES.

BACKGROUND:

WHEREAS, the City owns and operates a water supply system; and

WHEREAS, United Water Services Unlimited Atlanta LLC ("UWSA") operated and maintained the water supply system for the time period beginning January 1, 1999, through and including April 28, 2003, pursuant to the terms and conditions of a Twenty-Year Operations and Maintenance Agreement of Water System ("O&M Agreement"); and

WHEREAS, the City and UWSA have agreed to dissolve the O&M Agreement; and

WHEREAS, the O&M Agreement provides that, upon its termination or expiration, the City, if it elects, will be entitled to an assignment of various third-party agreements existing at the time of the termination or expiration, between UWSA and third-parties and relating to the operation and maintenance of the City's water system; and

WHEREAS, IER Corporation, Inc. ("Contractor") provides sludge hauling and disposal services and did so for UWSA during the time it operated and maintained the City's water system pursuant to the terms and conditions of that certain Sludge Hauling and Disposal Agreement dated October 1, 2002 (the "Original Sludge Agreement"); and

WHEREAS, Contractor desires to provide sludge hauling and disposal services to the City and the City has notified UWSA that it desires an assignment from UWSA of the Original Sludge Agreement; and

WHEREAS, in order to properly effectuate such an assignment by UWSA to the City of the Original Sludge Agreement and to appropriately modify the terms of the

Original Sludge Agreement to suit the transactional relationship proposed between the City and the Contractor, the City will need to execute: [i] an Assignment and Assumption Agreement with UWSA and United Water Resources, Inc.; and [ii] an Amended and Restated Agreement for Sludge Hauling and Disposal Services with Contractor; and

WHEREAS, the City has determined that it is desirable and in its best interests to execute the 2 Agreements to provide it a continued and uninterrupted ability to operate and maintain its water system;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA THAT, the Mayor is authorized to execute with UWSA and United Water Resources, Inc. an Assignment and Assumption Agreement. effectuating the assignment by UWSA to the City of the Original Sludge Agreement;

BE IT FURTHER RESOLVED THAT, the Mayor is authorized to execute with IER Corporation, Inc., an Amended and Restated Agreement for Sludge Hauling and Disposal Services, for an initial term of three (3) years, with the option for the City to renew the Agreement, under its same terms and conditions, for two (2) additional one (1) year terms; and

BE IT FURTHER RESOLVED THAT, the compensation payable to IER Corporation, Inc., LLC during each year of the Amended and Restated Agreement for Sludge Hauling and Disposal Services may not exceed \$250,000, to be based upon the services and price per services set forth in the Agreement;

BE IT FURTHER RESOLVED THAT, upon receipt of a monthly invoice from IER Corporation, Inc., approved as to form and amount by the City, the Chief Financial Officer is authorized to disburse payments to IER Corporation, Inc. or identified third parties, pursuant to the payment provisions of the Amended and Restated Agreement for Sludge Hauling and Disposal Services, such payment to be made out of Fund and Account Center Number 2J01 523001 Q63001; and

BE IT FURTHER RESOLVED THAT, the Assignment and Assumption Agreement and Amended and Restated Agreement for Sludge Hauling and Disposal Services will not be binding upon the City and the City will incur no liability under them until they have been fully executed by UWSA, United Water Resources, Inc. and IER Corporation, Inc., as appropriate, delivered to the City, executed by the Mayor, attested to by the Municipal Clerk, approved as to form by the City Attorney, and delivered to UWSA, United Water Resources, Inc, and IER Corporation, Inc., as appropriate.

BE IT FURTHER RESOLVED THAT, the Mayor or her designee is hereby authorized and directed to initiate competitive bidding procedures simultaneous with the consideration of renewal of the contract referenced herein.

ADOPTED as amended by the Council APPROVED by the Mayor

OCT 20, 2003 OCT 28, 2003

Rhanda Sauphin Johnson Municipal Clerk, CMC



AMENDED AND RESTATED AGREEMENT FOR SLUDGE HAULING AND DISPOSAL

This AMENDED AND RESTATED AGREEMENT ("Agreement") is entered into by and between the City of Atlanta ("City"), and IER Corporation, Inc. ("Contractor"),

BACKGROUND:

City operates water treatment facilities ("Facilities") in the locations set forth in Exhibit A attached hereto; and

United Water Services Unlimited Atlanta LLC ("UWSA") operated the Facilities for the time period beginning January 1, 1999 through and including April 28, 2003 pursuant to the terms and conditions of a Twenty-Year Operations and Maintenance Agreement of Water System between UWSA and City.

The Facilities generate dewatered sedimentation sludge in their operations that must be properly handled and disposed of; and

Contractor operates a sludge hauling and sludge disposal business in the State of Georgia; and

Contractor represents that it owns or has lands available to it under long term leases or agreements for the purposes of disposing of sludge from the Facilities by land application; and

Contractor desires to provide services to the City for the hauling of dewatered sludge from the Facilities for proper disposal on lands owned by or leased by or otherwise under its control; and

Contractor provided services to UWSA for the hauling of dewatered sludge from the Facilities for proper disposal on lands owned by or leased by or otherwise under its control pursuant to the terms and conditions of a Sludge Hauling and Disposal Agreement dated October 1, 2001 (the "Original Sludge Agreement"); and

Pursuant to the terms of that certain Assignment and Assumption Agreement by and among UWSA, United Water Resources Inc. and City, UWSA assigned to City all of its right, title and interest in and to (including but not limited to all rights to indemnification or warranty protection from Contractor) the Original Sludge Agreement; and

The parties hereto have agreed to amend and restate in its entirety the Original Sludge Agreement to substitute the City as the recipient of Contractor's sludge hauling and disposal services and to set forth the respective rights and obligations of the parties hereto.

Accordingly, in consideration of the premises set forth above and pursuant to the terms of this Agreement, the parties hereto agree as follows:



AGREEMENT:

1. Services:

- (a) Contractor must provide all equipment and process machinery, as well as all trucks or other suitable containers, supplies, personnel, and all other materials and requirements that are or may become necessary for removing, handling, hauling and disposing of sludge from the Facilities (the "Services"), including, but not limited to, the following dedicated equipment resources and personnel:
 - i. 1 Truck Driver;
 - ii. 1 Project manager;
 - iii. 3 Dump Trailers (1 dump trailer must be available at all times at Hemphill and 2 dump trailers must be available at all times at Chattahoochee);
 - iv. 1 Yard-dog truck for positioning the trailer at Hemphill;
 - v. 1 Radial Stacking Conveyor; and
 - vi. 1 Technical Services Advisor.
- (b) The Services must be performed during normal business hours, unless authorized in writing by the City's Deputy Commissioner of its Department of Watershed Management. In addition, Contractor must provide the necessary technical assistance to identify the needed application sites, permit the application sites with the Georgia Environmental Protection Division, as well as test and monitor the program throughout the term of the Agreement.
- (c) Contractor, by executing this Agreement, acknowledges full understanding of the extent and character of the Services required and the conditions surrounding the performance of those Services. City will not be responsible for any alleged misunderstanding of the Contractor concerning the terms of this Agreement or the Services to be furnished. It is understood that the execution of the Agreement by Contractor serves as Contractor's stated commitment to fulfill all of its conditions and obligations set forth in this Agreement.
- 2. Term Of Agreement; Renewals: The term of this Agreement will commence on the Effective Date (as defined in Paragraph 42 below), and unless earlier terminated in accordance with the terms of this Agreement, will continue for a term of three (3) years, ending on April 30, 2006 ("Expiration Date"). The City may renew this Agreement, under the same terms and conditions, for two (2) additional one (1) year terms by giving the Contractor notice of the renewal ninety (90) days prior to the expiration of the current term of the Agreement. Upon receipt by Contractor of a notice of the City's intent to renew this Agreement, Contractor may request that the City renegotiate terms of compensation payable to Contractor during the renewal term. If the City and Contractor cannot agree on compensation terms, the Agreement will expire at the end of its current term. No renewal of this Agreement will be valid unless, if required by the City's Code of Ordinances or other applicable law, appropriate legislative approval from the City's Council and Mayor is obtained, and sufficient funding for the renewal exists and is

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appropriated for the applicable renewal term, prior to expiration of the prior term of the Agreement. In the event of any renewals, City and Contractor must execute a Renewal Agreement in the same manner as the execution of this Agreement, or as otherwise allowed by the City's Code of Ordinances or applicable law; provided however that UWSA shall not be a party to any Renewal Agreement and any Renewal Agreement shall not require notice to or consent by UWSA. Other conditions for the renewal of the Agreement are listed in Exhibit B attached.

3. Compensation:

- (a) The rate of compensation payable to Contactor by City for the Services provided under this Agreement is set forth in Exhibit B attached to this Agreement.
- (b) The price indicated for sludge removal, handling, hauling and disposal takes into consideration variable trip distances to different disposal site(s) or fees imposed by outside agencies or parties for sludge application. No fees in addition to those already included in the prices will be paid as compensation for variable trip distances or for any other expenses whatsoever. During the term of this Agreement, no claims for additional compensation may be submitted by Contractor to City regarding tuck route alterations which result from road closings, weather, accidents, changing traffic patterns, construction activities or other reasons whatsoever.

4. Invoicing:

- (a) Invoices must be submitted to City on a monthly basis for work performed during the previous month. Invoices must be based on the total quantity of sludge removed from the Facilities. The unit of measurement will be tons of solids invoiced at a rate per ton for dewatered sludge as set forth in this Agreement, including Exhibit B attached.
- (b) All invoices must be forwarded to City at the address for notice in this Agreement. City will pay each such approved invoice within thirty (30) days of its receipt. All supporting documentation (weight tickets, load log, etc.) must be attached to the invoice. A sample form for a load log is attached in Exhibit D and must be filled out by the Contractor and submitted with the invoice.
- 5. Compliance With Applicable Laws: The Facilities are subject to regulation by federal, state and local governments and regulatory agencies. Contractor agrees to comply with and abide by all laws, ordinances, requirements, pronouncements, orders, roles, regulations, permits, licenses, restrictions, injunctions, moratoria or denials of permission to operate the Facilities imposed or issued by any such governmental entities or agencies or by any court of competent jurisdiction. In addition, Contractor must cooperate with City during any tests, experiments, construction, or any other actions performed by the City or other third parties concerning the Facilities.
- 6. Reevaluation Of Agreement Due To Changed Circumstances: In the event that the chemical composition of the dewatered sludge would change drastically so as to represent a problem for land application, the City and the Contractor agree to reevaluate the terms of this Agreement.

- 7. Records And Audits: Contractor must retain and maintain all records and documents relating to this Agreement and all sludge removed, handled, hauled and disposed of pursuant to this Agreement and must make them available at all reasonable times for inspection and audit by City during the term of this Agreement and for a period of five (5) years after the expiration of this Agreement. Contactor's accounting records and all supporting documentation must be maintained in such a manner as to provide for a separation between direct and indirect costs.
 - 8. Time Of The Essence: The parties agree that time is of the essence in the completion of the Services called for under this Agreement.
 - 9. **Insurance And Bonding:** Contractor must comply with the Insurance and Bonding Requirements set forth on Exhibit E attached.
 - sludge disposal, obtaining all necessary approvals, permits, licenses and certificates required, obtaining all approvals of plans or specifications, and meeting all requirements of federal, state, regional, and local laws, ordinances, rules, regulations, and policies pertaining to the performance of the Services pursuant to this Agreement and the subject matter of this Agreement. If any site used for final sludge disposal becomes unavailable or not acceptable for the final disposal of sludge for any reason whatsoever, Contractor must, at its sole expense, obtain alternative available and acceptable site(s) or means for the disposal of sludge from the Facilities.
 - 11. **Permits:** Contemporaneously with the execution of this Agreement, Contractor must furnish proof of any applicable approvals and permits for disposal and submit to City a listing of the site(s) available to Contractor for disposal as well as a map showing the location of the site(s), the number of usable acres associated with each site, and each site's permissible sludge application capabilities. All such permitted site(s) must be reserved for disposal of only sludge from water treatment facilities. Contractor is responsible for insuring that no other sludge or material is disposed of on Contractor's designated disposal site(s).
 - 12. City Obligations; Exceptions: City shall not be obligated to furnish any funds, labor, supplies, materials, utilities, or machinery whatsoever for the performance of this Agreement, except as specifically required by this Agreement. City will provide power for the radial stacking conveyor provided by the Contractor for the Chattahoochee Facility and fuel for the "yard dog" truck provided by the Contractor for the Hemphill Facility. City will also provide labor to operate the conveyor and the yard-dog truck. City's personnel will be allowed to operate the yard-dog truck on site when positioning trailers only. City will furnish an appropriate discharge point for the transfer of sludge to Contractor's trucks or to Contractors radial stacking conveyor. The discharge points are defined as follows: bottom of the chutes at the Hemphill Settled Solids Facility, and extremity of the discharge conveyor of the truck-mounted belt filter press at the Chattahoochee Settled Solids Facility. The Contractor is responsible for any accidental spills, conveyance malfunctions or transportation problems that occur after the discharge points, unless it is caused by improper operations of the conveyor and/or of the yard-dog truck by City's personnel.

- 13. Accidental Spills: Contractor must completely remove and haul any accidental spillage caused by the Contractor that occurs off or on the sites of the Facilities. City reserves the right, but is under no obligation, to inspect and reject all modes of transportation proposed by Contractor for removing and hauling sludge from the Facilities.
- 14. Policing Of Services Areas: Contractor must, at all times, keep the Services areas free from accumulation of waste materials or rubbish caused by the improper function of its equipment, and promptly remove any such materials into an area on site designated by City, or remove such materials to a waste site as directed by City.
- 15. **Personal Property Casualty:** Contractor is responsible for any damage or loss by fire, theft or otherwise, to materials, tools, equipment, consumables and any other items of personal property, existing or left on City property by Contractor.
- 16. Access To Disposal Sites: Contractor must allow City personnel or regulatory agency representatives access to the disposal site(s) for inspections or for any other purpose at all reasonable times.
- 17. No Partnership or Joint Venture; Debts: Independent Contractor. Nothing contained in this Agreement will be deemed to create a partnership or joint venture between the City and the Contractor or cause the City to be responsible for the debts or obligations of the Contractor or any other Person. Nothing contained in this Agreement or any lower tier purchase order or Subcontract awarded by the Contractor will create any contractual relationship between any lower-tier supplier or subcontractor/subconsultant and the City. The Contractor will at all times under this Agreement, be acting as an independent contractor.
- Safety. Contractor must take all necessary precautions for the safety of City's 18. and Contractor's employees and any subcontractors or agents who assist in the performance of this Agreement and must erect and properly maintain at all times all necessary safeguards for the protection of the workers and the public. Contractor must post signs warning hazards in and around any Services site. Contractor will comply with all applicable laws, regulations and safety standards to prevent accidents or injuries to persons on or about the premises where the Services under this Agreement are being performed. Contractor is responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Services to be provided under this Agreement, including compliance with all applicable OSHA regulations and the regulations of all other agencies having jurisdiction over safety and health. Contractor must give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property for their protection from damage, injury or loss. Contractor must inspect all equipment, materials and other items of personal property used by it in providing Services in accordance with Prudent Industry Practices to discover any conditions that might involve risks and will be solely responsible for discovering and correcting any of those conditions.

19. Warranties:

- (a) Contractor warrants and represents as follows:
- i. Contractor owns or has lands available to it under long term leases or agreements for the purposes of disposing of sludge from the Facilities by land application.
- ii. Contractor has the capability, experience and means required to perform the Services covered by this Agreement. Services will be performed using personnel, equipment and materials qualified and suitable to do the work requested.
- iii. Contractor will perform all Services in a diligent and workmanlike manner consistent with all applicable laws and regulations.
- iv. Contractor will promptly notify City if (i) Contractor is served with notice of claims against it or the violation of any laws, regulations or permits which relate in any material respect to Services hereunder, (ii) proceedings are commenced which could lead to revocation of permits or licenses which relate to such Services; (iii) permits or licenses relating to such Services are revoked; (iv) Contractor becomes aware that any equipment or facilities related to such Services are not in compliance with applicable laws and regulations; or (v) Contractor intends any change, or any change takes place, in disposal practices or disposal locations with respect to the Services provided under this Agreement.
- v. All facilities to which Contractor ships sludge from the Facilities will be licensed and permitted to receive such sludge according to all applicable laws and regulations, and Contractor must fully comply with the requirements of such permits associated with these Services.
- vi. The manner of disposal utilized for the Services provided under this Agreement meets all legal and regulatory requirements, including, without limitation, all requirements of federal and state law.
- (b) Contractor acknowledges and agrees that any violations of the above conditions will cause an early termination of the Agreement without penalty.

20. Acknowledgements and Representations:

(a) Contractor hereby acknowledges and agrees that all terms, covenants, provisions and conditions to be performed, observed or complied with by UWSA, to date, under the Original Sludge Agreement have been performed, observed and complied with and no default or event of default by UWSA exists under the Original Sludge Agreement. Contractor hereby represents and warrants to City that there does not now exist any condition that would, with the giving of notice or the passage of time or both result in a default or event of default by UWSA under the

Original Sludge Agreement. No compensation, sums, assessments, dues or charges required to be paid by UWSA under the Original Sludge Agreement are past due.

- (b) Contractor acknowledges and agrees that except as specifically set forth herein, City does not assume and shall not assume or in any way undertake to pay, perform, satisfy or discharge any liability or obligation (including but not limited to provision of goods or services or payments required therefore, or indemnification or warranty obligations) of UWSA under the Original Sludge Agreement, whether existing on, before or after the Effective Date of this Agreement or arising out of any dealings between Contractor and UWSA, or any state of facts existing on, prior to or after the Effective Date of this Agreement. All such liabilities shall remain the exclusive liabilities and obligations of UWSA.
- (c) Contractor acknowledges and agrees that UWSA has assigned to the City and the City has accepted such assignment as to all of UWSA's right, title and interest in and to (including but not limited to all rights to indemnification or warranty protection from Contractor) the Original Sludge Agreement pursuant to that certain Assignment and Assumption Agreement by and between City and UWSA; provided, however, that City has not assumed and shall not assume or in any way undertake to pay, perform, satisfy or discharge any liability of UWSA (the "Excluded Liabilities"), whether existing on, before or after the Effective Date of this Agreement. All such liability shall remain the exclusive liabilities and obligations of UWSA.
- (d) Contractor acknowledges and agrees that City shall not be liable for any Excluded Liabilities. Contractor agrees to look solely to UWSA for payment or performance of any Excluded Liability.
- (e) Notwithstanding anything to the contrary contained in this Agreement, Contractor acknowledges and agrees that all representations, warranties and indemnifications made by Contractor in the Original Sludge Agreement shall remain in full, force and effect, shall inure to the benefit of City and shall survive execution of this Agreement.
- 21. **Indemnification:** Contractor hereby agrees to indemnify and hold harmless City, its officers, agents and employees, from and against all liabilities, losses, claims, demands, damages, fines, fees, settlements, expenses, penalties, attorney's fees, lawsuits, injunctions, proceedings, actions and causes of actions, including, without limitation, any of the foregoing which may arise under the Federal Resource Conservation and Recovery Act ("RCRA"), the Federal Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), the Federal Hazardous Materials Transportation Act, the Federal Clean Water Act, and corresponding state and local laws and ordinances, as such acts, laws, or ordinances are currently in effect, or from time to time are amended, or as defined in any federal, state or local regulation currently in effect, , arising out of, resulting from, or existing in connection with this Agreement, including, without limitation, acts or omissions of Contractor, its agents, servants, employees or others.



22. Termination Of Agreement:

(a) Termination for Default:

- i. If the City or the Contractor determines that there has been a breach or event of default by the other party under this Agreement, the non-breaching party will notify the other party of such event of default.
- ii. If the event of default is cured within thirty (30) days after notice, or if it cannot be cured within thirty (30) days through the exercise of due diligence, but expeditious and substantive steps are taken by the curing party within the initial thirty (30) day period to cure the event of default and the cure is completed no later than sixty (60) days following notice, the non-breaching party's right to terminate for the default or breach will be deemed to have lapsed.
- iii. If (a) more than two (2) events of default on the part of Contractor occur in any twelve (12) month period; or (b) the Contractor fails to cure an event of default within sixty (60) days, then the City may terminate this Agreement immediately upon notice without penalty.
- (b) Termination For Commercial Unreasonableness: If any governmental body, agency or court of competent jurisdiction issues an order relating to the subject matter of this Agreement, or any other situation arises that makes it commercially unreasonable or impractical for the City to continue with this Agreement, the City may terminate this Agreement immediately in its sole discretion without penalty upon written notice to the Contractor.
- (c) Waiver of Notice of Termination. UWSA specifically waives any right to notice of any termination of this Agreement pursuant to this Section 21.
- 23. Contractor Obligations Upon Termination: Within ten (10) days after any termination of this Agreement, Contractor must remove, at its expense, all supplies, equipment or other items of personal property utilized or stored at any of the Facilities.
- 24. **Notices:** Notices to be provided under this Agreement will be given in writing to the parties as follows:

TO CONTRACTOR:

IER Corporation, Inc 594 River Oak Loop Lawrenceville, Georgia 30044 Attention: Julius Montgomery

TO CITY:

Department of Watershed Management City of Atlanta 55 Trinity Avenue, S.W. Atlanta, Georgia 30303 Attention Deputy Commissioner Facsimile No. (404) 658-7194

AND

City of Atlanta
Bureau of Water
651 14th Street
Atlanta, Georgia 30318
Attention: Deputy Commissioner
Facsimile No. (404) 609-7128

- 25. Applicable Law; Jurisdiction And Venue: This Agreement has been executed in the State of Georgia and will be governed by, and construed according to, the laws of the State of Georgia. The jurisdiction and venue for any disputes arising under this Agreement will be Fulton County, Georgia.
- 26. Severability: If any provision of this Agreement is held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability will not affect any other provision of this Agreement. This Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained in it.
- 27. **Final Agreement:** This Agreement, including its Exhibits, is intended by the parties to be a final, exclusive, and complete expression of their agreement and its terms concerning the subject matter of this Agreement, and supersedes all previous agreements, negotiations, discussions, writings, understandings, commitments and conversations with respect to such subject matter, including the Original Sludge Agreement. There are no agreements or understandings between the parties concerning the subject matter of this Agreement other than those set forth or referred to herein. Notwithstanding anything to the contrary in this Section 27, all representations, warranties and indemnifications made by Contractor in the Original Sludge Agreement shall remain in full, force and effect, shall inure to the benefit of City and shall survive execution of this Agreement.
- 28. Subcontractors: Contractor may not employ subcontractors without the prior written consent of City as to the particular subcontractor to be employed. If granted the authority to employ a specific subcontractor, Contractor may not alter, change, terminate and/or substitute its relationship with that subcontractor without the prior written consent of the City. The City acknowledges its consent for Contractor to utilize the services of Southern Champion Services, LLC as a subcontractor to perform services under this Agreement.

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- 29. Assignment: This Agreement and any right or obligation of performance hereunder may not be assigned or delegated, in whole or in part, by Contractor without the prior written consent of City; any assignment or delegation made without the prior written consent of the City will be void.
- 30. Amendments And Modifications Of Agreement: This Agreement may not be modified or amended except by a writing signed by City and Contractor; if necessary, the execution of any amendment or modification by the City must be authorized by appropriate legislation adopted by City's Council and approved by City's Mayor, in accordance with the City's Code of Ordinances. No modification or amendment to this Agreement shall require any notice to or consent by UWSA.
- 31. **Estoppel And Waiver:** The waiver by either party of any term under this Agreement will not constitute a waiver of any other term, condition, or right under this Agreement, nor will any such action or failure to act constitute an approval or acquiescence in any breach under this Agreement by the other party.
- 32. Ownership of Information; Confidentiality. All reports, information, data or other documents given to, prepared by or assembled by Contractor under this Agreement are the exclusive property of City and must be kept confidential and may not be made available to any person by Contractor without the prior written approval of City, except disclosure required by applicable law or in connection with a dispute to which the information reasonably relates (in which instance, Contractor will provide City of such disclosure prior to its being made or, if not feasible, within 24 hours of disclosure).

33. Ethics: Gratuities and Kickbacks.

- (a) Gratuities and Kickbacks. This Agreement may be terminated if Contractor, or any other representative of Contractor, gave or agreed to give, any employee or former employee of City a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal for a contract or subcontract.
- (b) Contingent Fees. Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for Contractor, to solicit or secure this Contract; and that Contractor has not paid or agreed to pay any company, association, corporation, firm or person, other than a bona fide employee working for Contractor, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Contract. For the breach or violation of this warranty, City may terminate this Agreement and, at its discretion, may deduct from any amounts owing to Contractor, or otherwise recover the full amount of any fee, commission, percentage, gift or consideration.

- (c) Rights and Remedies. The rights and remedies of City and Contractor provided in this Clause are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
 - 34. Precedence of Agreement Documents. All Agreement Documents and subsequently issued addendums, changes and amendments to this Agreement are essential parts of this Agreement and a requirement occurring in one is binding as though occurring in all. In resolving conflicts, discrepancies, errors or omissions, the following order of precedence will be used:
 - (a) Agreement; and
 - (b) Exhibits.
 - 35. Backcharges.
- (a) Corrective Actions by City. If during its performance of Services under this Contract, Contractor is notified by City to correct defective or nonconforming Services, and Contractor states or by its actions indicates that it is unable or unwilling to proceed with corrective action in a reasonable time, City may correct the non-conforming Services and backcharge Contractor for all reasonable costs incurred. Furthermore, if City is required to perform Services for Contractor, City may perform those Services by the most expeditious means available and backcharge Contractor for the costs incurred.
- (b) Backcharges not a Release. City will separately invoice or deduct from payments otherwise due to Contractor any backcharge costs. City's right to backcharge is in addition to all other rights and remedies provided in the Agreement or by law. The performance of backcharge Services by City will not relieve Contractor of any of its responsibilities under the Contract, except for those specific backcharge services performed by City (but not future similar Services required to be performed by Contractor).
 - 36. Force Majeure.
- (a) Acts Constituting Force Majeure. City and Contractor will not be liable for their respective non-negligent or non-willful failure to perform under this Agreement or for any delay in performance or non-performance due to:
 - i. any cause beyond its respective reasonable control;
 - ii. the inability to process Finished Water in compliance with Governmental Requirements as a result of any cause beyond its respective control or the design or operational capabilities of the Facility:
 - iii. any act of God;
 - iv. any change in applicable Governmental Requirements rendering the performance of any portion of this Agreement commercially unreasonable or legally impossible;

- v. earthquake;
- vi. fire;
- vii. explosion;
- viii. flood:
- ix. strike or labor dispute;
- x. any shortage or disruption of or inability to obtain labor, material, facilities, power, fuel or transportation from usual sources;
- xi. delay or failure to act of any governmental or military authority;
- xii. any war, hostility or invasion;
- xiii. any embargo, sabotage, civil disturbance, riot or insurrection;
- xiv. the discovery of any unforeseen physical condition at the Facility; or
- xv. any legal proceeding not involving the performance of each respective party to the other of its obligations under this Contract.
- (b) Affected Party Entitled to an Extension of Performance Period. If Contractor's or City's performance under this Agreement is delayed by any act constituting a Force Majeure, the affected party will be entitled to an equitable extension in the time for its performance of the affected Agreement obligations commensurate with the duration of the applicable Force Majeure.
- 37. Fines. If federal, state or other applicable law are violated, due to negligence, willful misconduct or breach of this Agreement, by Contractor or any of its agents, subcontractors/subconsultants, suppliers or materialmen, or anyone acting under its direction or control or on its behalf, and City is subjected to a fine by any regulating or governing authority, Contractor will reimburse City in full for all fines promptly upon receipt of an invoice from City. If Contractor fails to reimburse City within (ten) 10 days after its receipt of an invoice, City may deduct the full amount of any fines from sums due or to become due to Contractor under this

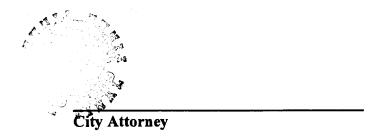
Agreement. City will permit Contractor to be involved in any proceeding to determine the applicability of fines for which Contractor may be responsible.

- 38. Compliance With City's Security Requirements. Contractor must comply with City's security requirements for the Facility. Contractor must cooperate with City on all security matters and must promptly comply with any Project security arrangements established by City. Compliance with these security requirements will not be construed as limiting, in any manner, Contractor's obligations with respect to all applicable Governmental Requirements, assuming that these obligations are consistent, and its duty to undertake reasonable actions to establish and maintain secure conditions at the Facility. If Contractor violates any security requirement imposed by City, of which it has been provided a written copy, or Governmental Requirements and City incurs a cost, expense, fine or other financial burden, Contractor must immediately indemnify City upon written notice from City.
- 39. Safety And Health; Safe Operations. Security. Contractor will, at all times, conduct all operations under this Agreement according to Prudent Industry Practices relative to Facility in order to minimize the risk of loss, theft, or damage by vandalism, sabotage or any other means to any Facility Equipment, materials, Services or other property at the Facility.
- 40. Taxes. Contractor will pay any such taxes, levies, duties and assessments of every nature due in connection with the Services under this Agreement and will make all payroll deductions and withholdings required by law, and will indemnify and hold harmless City from any liability on account of any taxes, levies, duties, assessments and deductions. Contractor further agrees to be exclusively responsible for the payment of all wages, salaries, compensation, benefits (including disability benefits), fund contributions, contributions and taxes for unemployment insurance, old age benefits, pensions and annuities for all persons employed by or through Contractor to fulfill this Agreement.
- 41. City's Programs. Contractor must comply with the City's EBO, EEO and First Source Jobs Policy Programs in performing Services under this Agreement, as set forth in the City's Code of Ordinances.
- 42. Effective Date. The Parties acknowledge and agree that this Agreement has no binding effect on COA until the Agreement is: (i) adopted by City of Atlanta's Council; (ii) approved by the Mayor of the City of Atlanta; (iii) executed by EDS; (iv) executed by the Mayor of the City of Atlanta; (v) attested to and sealed by the Municipal Clerk of the City of Atlanta; (vi) approved as to form by the City Attorney of the City of Atlanta; and (vii) delivered to EDS. Once the foregoing conditions are satisfied, the effective date of the Agreement shall be April 29, 2003 ("Effective Date"), and the Agreement and its terms and conditions shall relate back to such Effective Date and control the relationship of the parties from and including such Effective Date until the expiration or earlier termination of the Agreement.

CITY OF ATLANTA

Mayor
ATTEST:
Municipal Clerk (Seal)
APPROVED:
Commissioner; Department of Watershed Management
Chief Procurement Officer
Director, Department of Finance
Chief Operating Officer

APPROVED AS TO FORM:



IER CORPORATION, INC.

Hy:___ Name:

ATTEST:

Corporate Secretary Assistant

Secretary (Seal)

EXHIBIT A

Facilities

Address

<u>Hemphill Water Treatment Plant – Settled Solids Facility</u>

1350 Howell Mill Road Atlanta, GA 30318

Chattahoochee Water Treatment Plant - Settled Solids Facility

2532 Bolton Road NW Atlanta, GA 30318

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